

## REMARKS

Claims 1-16 are pending in the application. The Examiner has rejected claims 1-16.

### ***Claim Amendments***

Applicant has amended claims 1-7 and 15-16 to respond to the Examiner's objections. Claim 8-14 have been cancelled. Claims 17-21 have been added. No new matter has been added and no additional fees are believed to be due. Amendments to the claims are supported by at least paragraphs [0002] and [0031] – [0036] as published in US 2006/0243681 A1.

### ***Claim Rejections – 35 U.S.C. §112***

The Examiner has rejected claims 1-14 as being indefinite and as being in improper form and/or subject to restriction. Applicant has amended the claims to place them in better condition for examination. Applicant kindly asks that the Examiner reconsider this objection.

### ***Claim Rejections – 35 U.S.C. 103(a)***

#### **Applicant's Claims Are Not Rendered Obvious Under 35 U.S.C. §103 Over Any Of The Prior Art Patents**

The Examiner has rejected Applicants' claims under 35 U.S.C. §103 based on *AEG Hausgeaete* EP1072221 A1 (AEG). Applicants respectfully disagree with the Examiner.

As previously stated, the cited prior art differs from the Applicants' claims. Therefore, a person of ordinary skill in the art at the time of the invention would not have looked to the prior art cited by the Examiner to create Applicants' claims. As such, the Applicants respectfully request that the Examiner reconsider Applicants' claims.

### **A. Prima Facie Evidence Of Obviousness Has Not Been Presented**

The Examiner has rejected Applicants' claims under 35 U.S.C. §103 based on *AEG Hausgeräte* EP1072221 A1 (AEG). Applicants respectfully disagree with the Examiner.

The Examiner has failed to establish a prima facie case of obviousness. When examining a patent application, the Examiner has the initial burden of factually supporting a prima facie conclusion of obviousness.<sup>1</sup> Additionally, when rejecting claims under 35 U.S.C. §103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness.<sup>2</sup> In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). Specifically, the Examiner must (1) determine the scope and content of the prior art; (2) determine the differences between the prior art and the claims at issue; and (3) determine the level of ordinary skill in the art.<sup>3</sup> In addition to these factual determinations, the Examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."<sup>4</sup> Moreover, the analysis supporting obviousness should be made explicit and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements" in the manner claimed.<sup>5</sup>

Only if the Examiner makes a prima facie case of obviousness, does the burden shift to the Applicant for providing evidence of non-obviousness.<sup>6</sup> Obviousness is then determined based on the evidence as a whole and the persuasiveness of the arguments.<sup>7</sup> Here, the Applicants respectfully assert that the Examiner has failed to meet the evidentiary burden.

Rejections based on obviousness cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *See MPEP 2143.01 IV citing to KSR*. In the present case, the Office Action merely states "there is no reason why the drawer could not be positioned underneath the basket as an alternative mechanical

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<sup>1</sup> See, *In re Otetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

<sup>2</sup> See, *In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988).

<sup>3</sup> See, *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

<sup>4</sup> See, *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

<sup>5</sup> See, *KSR Int'l Co. v. Teleflex*, No. 04-1350, slip op. at 15 (U.S. 4-30-2007).

<sup>6</sup> See, *In re Otetiker*, 977 F.2d at 1445.

<sup>7</sup> See, *Id.*

equivalent and a matter of design choice for one having ordinary skill in the art at the time of the invention.” *Instant office action*. This is a mere conclusory stating there is “no reason why,” but not articulating the reason why.

As such, the Applicants respectfully request that the Examiner withdraw this rejection and reconsider Applicants’ claims.

**B. Claims 1 - 16 rejected over AEG**

With respect to claims 1-16, the Examiner has indicated on pages 3 of the Office Action that:

Hauseraete teaches a basket 1 which is used in dishwashers and including a drawer which slides on rails 3, 3’. The drawer is capable of holding utensils. Although the drawer is positioned over the basket, there is no reason that the drawer could not be positioned underneath the basket as an alternative mechanical equivalent and a matter of design choice for one having ordinary skill in the art at the time of the invention.

Applicant believes that amendments to the claims makes the objections moot. Nevertheless, the Applicant respectfully asserts that *AEG* actually teaches away from Applicants’ invention and therefore, the person of ordinary skill in the art at the time of the invention would not have looked to *AEG* to create Applicants’ invention. Specifically, the *AEG* teaches the use of the overhead basket which would destroy the utility of space creation above the basket. Further, it is not a simple matter to just place the basket under the drawer because it may, and would with the drawer in *AEG*, interferes with the spray arm therefor rendering the invention inoperable. As stated above, the analysis supporting obviousness should be made explicit and should “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements” in the manner claimed.<sup>8</sup> There is no such discussion in the office action.

Additionally in *AEG*, the drawer is mounted on the basket. So, the drawer increases the length of the basket in the dishwasher body. In this instance, a problem arises if the

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<sup>8</sup> See, *KSR Int’l Co. v. Teleflex*, No. 04-1350, slip op. at 15 (U.S. 4-30-2007).

dishwasher has height adjustable mechanism for the basket because the drawer prevents the movement of the basket in the vertical axis in the dishwasher body.

In contrast, the drawer is positioned at the bottom part of the basket in the present invention. Further, the drawer is positioned also in such a way that the area of use under the basket is not affected in any way and that its base is at the approximately same level with the base of the basket (pg. 2, parag. 18). The basket moves freely on the vertical axis in the dishwasher body such that the drawer does not occur any projection on the basket. In the present invention, the drawer provides an additional space wherein objects to be washed can be placed without changing the size of the basket. *AEG* clearly does not teach the use.

Further, as now amended, the claims include additional elements not included in *AEG*. Moreover, claim 15 includes the element of a spray arm which is not discussed anywhere in the objection. As such, these claims cannot be obvious since the Office Action has not even shown that the elements of the claims.

Therefore, *AEG* cannot render Applicants' invention obvious under 35 U.S.C. §103 because a person of ordinary skill in the art would not look to this piece of prior art to create Applicants' invention.

As such, the Applicants respectfully request that the Examiner withdraw this rejection and reconsider Applicants' claims.

### ***Conclusion***

Applicants believe they have addressed and responded to every point raised in the Examiner's present action. For the reasons stated above, Applicants respectfully request reconsideration of their application.

Respectfully submitted,

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